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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: BALTIMORE, MARYLAND Date: APR 05 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the beneficiary of an approved petition for alien worker. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside with his U.S. citizen children in the United States.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying family members. The application was denied accordingly. *See District Director's Decision* dated November 18, 2002.

On appeal, counsel asserts that the Immigration and Naturalization Service (now known as Citizenship and Immigration Services, "CIS") misapplied the extreme hardship standard set forth in section 212(h) of the Act, and that the evidence in the record establishes extreme hardship to the applicant's U.S. citizen children. On appeal, dated December 11, 2002, counsel requested 120 days in order to submit evidence regarding the hardship that would be imposed upon the applicant's qualifying family members if his waiver application was not approved. As of this date, almost 15 months later, counsel has provided no additional evidence.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
> >
> > . . . .

Section 212(h) of the Act provides, in pertinent part, that:

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> > . . . .
> >
> > (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The record reflects that on October 10, 1997 in the Circuit court for Prince George's County, Maryland, the applicant was convicted of theft. The applicant is inadmissible to the United States due to his conviction of a crime involving moral turpitude (theft).

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be

considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to his U.S. children.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extend of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel did not present new evidence to show that extreme hardship would be imposed upon the applicant's children. The applicant submitted previously copies of his children's birth certificates, a letter from the elementary school his children attend, financial statements, an affidavit from himself and a brief from his attorney. In the brief counsel asserts that the applicant's children will suffer financial hardship if the applicant is not permitted to remain in the United States. In his affidavit the applicant states that it is difficult for him to meet his monthly financial obligations and that it would be devastating for his children if he was forced to leave the country and could not remain together as a family. The brief states general hardship that would be imposed on the applicant's children if he were to be removed to Mexico. The record contains no other claims or evidence of hardship. The record of proceedings does not make it clear whether the applicant's children would follow him to Mexico is he were removed. If the applicant is removed to Mexico his U.S. children will suffer hardship, but there is no indication that the children do not speak Spanish or would not be able to adjust to life in Mexico if they were to relocate with the applicant to Mexico. If the children were to accompany the applicant to Mexico, it would be expected that economic, linguistic and cultural difficulties would arise. No evidence exists that this will specifically impact them at a level that rises to extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the all the factors presented, and the aggregate effect of those factors, indicates that the applicant's children would suffer hardship due to separation. The applicant has failed, however, to show that his qualifying relatives would suffer extreme hardship over and above the normal social and economic disruptions involved if the applicant was not permitted to remain in the United States at this time. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.